IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 273 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF INCOME-TAX

Versus

ANANG POLYFIL PVT.LTD.

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Appearance:

1. INCOME TAX REFERENCE No. 273 of 1992
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 19/02/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue under Section 256(1) of the Income-tax Act, 1961, the following question has been referred for our opinion for

assessment year 1984-85 :-

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that depreciation at 30% was allowable in respect of cost of diesel engine set for generating electricity ?"

2. We have heard Mr Manish R Bhatt, learned standing counsel for the revenue. Though served, none appears for the respondent-assessee.

3. Our attention has been invited to the decision dated 12.2.2004 of this Court in Income-tax Reference No. 47 of 1992 wherein also the same question regarding the rate of depreciation on diesel generator set was considered. After examining the Table of rates at which depreciation is admissible in Part I of Appendix I to the Income-tax Rules, 1962, we have held that only generators running on wind energy are covered by sub-item 13 of Item 10A and that the generators running on diesel are not covered by the said sub-item. Moreover, the Tribunal has also given a finding in the context of the assessee's claim for extra shift allowance that the diesel generator set cannot be considered to be plant alongwith other items of plant and machinery.

4. Applying the ratio of the aforesaid decision to the facts of this case, we answer the question in the negative i.e. in favour of the revenue and against the assessee.

The reference accordingly stands disposed of.

(M.S. Shah, J.)

(M.C. Patel, J.)

sundar/-